

RELEASE ON DELIVERY

ADDRESS OF SENATOR STROM THURMOND (D-SC) IN THE SENATE IN
OPPOSITION TO PASSAGE OF H. R. 6127, AUGUST 6. 1957.

Mr. President, I am opposed to the creation of a Commission on Civil Rights/as proposed in Part I of H. R. 6127.

To begin with, there is absolutely no need or reason/for the establishment of such a Commission. If there were any necessity for an investigation in the field of civil rights, such an investigation should be conducted by the States/or by an appropriate Committee of the Congress, acting within the jurisdiction of congressional authority. It should not be done/by a Commission.

I also object to Part I of H. R. 6127/because of the fact that it places duties upon the Commission/and endows it with powers which no governmental commission should have.

In fact, Mr. President, the language of the bill proposing to establish this Commission/is so broad and so general/that it may encompass more evils than have yet been detected in it.

Under its duties and powers/the Commission would be able to subpoena citizens to appear before/it/to answer questions on many subjects outside the scope of elections and voting rights.

Section 104 (a) provides The Commission shall --

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

Mr. President, the bill, in Part IV, contains an additional protection of the voting right of citizens/above and beyond present State and Federal laws. Provision is made for enforcement of Part IV, and there were already sufficient enforcement provisions to carry out the intent of the existing State and Federal laws. I do not see how a Commission could enhance the investigative powers of law enforcement officers/nor the enforcement and punitive authority of the courts.

I can see no valid reason why a Commission should be created, in addition to the legal enforcement procedures, unless the purpose is for the Commission to stir up litigation among our people.

This bill has been advertised, promoted, and ballyhooed/as a right to vote bill. However, I want to cite two paragraphs which give broad authority for investigations other than alleged violations of a person's right to vote.

Section 104 (a) provides The Commission shall --

- "(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and
- "(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

Instead of limiting the power of the Commission, these two paragraphs provide it with carte blanche authority/to probe into and meddle into every phase of the relations existing between individuals / which the Commission and members of its staff could conjure up.

I want to call particular attention to a divergence in language/between paragraphs 2 and 3. Paragraph 2 refers to a study of "legal developments/constituting a denial of equal protection." Paragraph 3 says "appraise the laws and policies of the Federal Government/with respect to equal protection."

The significant thing here is the omission of the specific intent of paragraph 2. Although the language of paragraph 2 is obscure and omits a governmental reference, it obviously must refer to State and local governments, else it would be redundant and have no meaning at all.

Also, as I pointed out, investigations conducted under paragraphs 2 and 3/could go far afield from the question of voting rights. The Commission could exert its efforts toward bringing about integration of the races in the schools, and elsewhere, under the authorization of these two paragraphs. Combining its authority to investigate on an unlimited scale/and its authority to force witnesses to answer questions, the Commission would have a powerful weapon.

Mr. President, I do not believe the people of this country realize the virtually unlimited powers of inquiry/which would be placed in the hands of this political Commission. While the Commission would have no power to implement its desires, I do not believe the people of this country want such a totalitarian type of "persuasion"/imposed upon them.

Part I of H. R. 6127 purports to create a Civil Rights Commission. Actually, it would create a traveling investigation Commission.

Section 103 (b) of Part I/also would place tremendous power within the grasp of the Attorney General/with reference

to members of the Commission "otherwise in the service of the Government." The clear implication is that whoever drafted this scheme to send traveling agents over the country/intended to make use of certain members of the Executive Branch of the Federal Government. I don't believe it would be necessary to look farther than the Justice Department/to determine where Commission members already in Government service would be secured. By placing his employees on the Commission, the Attorney General would transform the traveling agents into an additional investigative arm of the Justice Department.

Mr. President, I next call attention to the potential abuse found in Section 102 (g)/under the innocuous title, "Rules of Procedure of the Commission." That section provides that:

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year."

In an editorial of July 26, 1957, The Washington Post very correctly pointed out/how this section could be used to imprison reporters and other citizens/for disclosure of what a witness might voluntarily tell them. This editorial provides a penetrating and enlightening criticism of this section. Because of its pertinency and fine analysis, I shall read the last three paragraphs of the editorial/which is entitled "Open Rights Hearings," which states:

"The bill contains an invitation to the commission to operate behind closed doors. It provides that 'if the commission determines that evidence or testimony at any hearing/may tend to defame, degrade, or incriminate any person, it shall...receive such evidence or testimony in executive session. . .'. Some closed sessions may be necessary to avoid unfair reflections upon individuals, but these should certainly be an exception to the general rule. In our opinion, this section ought to be rewritten in more positive vein/to provide that sessions of the commission should be open to the public, unless it should find that closed hearings were essential to avoid unfairness.

"The House also wrote into the bill a dangerous section/providing for the fining or imprisonment for not more than one year/of anyone who might 'release or use in public,' without the consent of the commission, any testimony taken behind closed doors. If the commission should choose to operate under cover, without any valid reason to do so, newspaper reporters and other citizens could be jailed for disclosure/of what a witness might voluntarily tell them. This is a penalty that has been shunned even in matters affecting national security. Such a provision is an invitation to abuse/and a serious menace to the right of the people to know about the activities of governmental agencies.

"It is well to remember that this would not be merely a study commission. In addition it would be under obligation to investigate allegations/that persons were being deprived of their rights under the Fourteenth and Fifteenth Amendments. It could subpoena witnesses and documents/and appeal to the courts for enforcement of such edicts. Its powers would be such that it should be held to scrupulous rules of fairness. To encourage the commission to operate in secret, and then to penalize news media and citizens for disclosing what should have been public in the first place, would be the sort of mistake that Congress ought to avoid at the outset."

Mr. President, I think the points made in the editorial are clear and valid. Secrecy in the activities of such a Commission could only lead to a denial of the rights of an individual/rather than to protection of his rights.

Another subject which must not be passed over is the subpoena power of the Commission. Section 105 (f) provides that "subpoenas for the attendance and testimony of witnesses/or the production of written or other matter/may be issued in accordance with the rules of the Commission..."

Mr. President, many of the committees and special committees of the Congress do not have this power. The Truman Commission on Civil Rights did not have it. The subpoena is a punitive measure, generally reserved for penal process/whereby powers are granted to force testimony which would not otherwise be available. If the proposed Commission were simply a fact-finding commission and non-political, the extreme power to force testimony by the use of a subpoena would not be needed.

Neither would the power contained in Section 105 (g)/which provides that Federal courts shall have the power, upon application by the Attorney General, to issue "an order requiring" a witness to answer a subpoena of the Commission/and "any failure to obey such order of the court may be punished by said court as a contempt thereof."

The power of subpoena in the hands of a political commission/and the additional power to enforce its subpoenas by court order/diverge from the authority of the traditional American fact-finding commission.

I look with suspicion upon such a Commission so endowed with authority, and I object to its establishment.

Mr. President, I want to discuss another reason, briefly, why I would be opposed to the establishment of the Commission proposed in Part 1 of H. R. 6127. Every appropriation bill which has come

before the Senate this year/has been reduced by the Senate below the budget request. The people of this country have called upon the members of Congress to reduce the costs of government, not to increase them by creating new agencies or commissions.

The advocates of the Commission might argue that the cost of its operation would not be great, but nowhere in the records of the hearings/have I found an estimate of what the total cost would be. If the Commission were to exist only for the two years provided in the bill, the compensation and per diem allowance of Commission members/would amount to more than a quarter of a million dollars, not counting their travel allowances.

Since there is no limitation on the number of personnel which might be appointed by the Commission, there is no way to estimate the ultimate cost of personnel salaries and expenses. Since the Commission is designed to travel over the country at will, very heavy travel expenses undoubtedly would be incurred.

The taxpayers would never know how many of their tax dollars were wasted by virtue of the seemingly innocuous language in Sec. 105 (e). Unknown, concealed costs are not, however, the only dangers lurking in that subsection. A serious departure from sound legislative procedure is also involved.

In the past, when creating an agency or commission, Congress retained control of its creation by the appropriation power. This is a wonderful check, Mr. President, against the abuse or misuse of Commission authority. Scrupulous care should be taken to preserve it.

However, Section 105 (e) provides that:

"All Federal agencies shall cooperate fully with the Commission/to the end that it may effectively carry out its functions and duties."

Thus the Civil Rights Commission could call on the other governmental agencies/to perform many of its tasks. Congressional control over the Commission would be much less than if the Commission had to depend on its own appropriations/and would not be permitted to use the resources of other agencies. Once the Commission is created, only another law can check its activity during the period of its existence.

Another thing that concerns me about this Commission/is the fact that once a government agency or commission is established, nothing else on earth so nearly approaches eternal existence as that government agency or commission. Mr. President, I fear that the two-year limitation placed upon the Commission in this bill/would simply be a starting point, and the people of this country should realize that at this time.

With further reference to Section 104 (a), I want to point out the use of the mandatory word "shall." This word requires the Commission to investigate all sworn allegations submitted to the Commission/ of any citizen allegedly being deprived of his right to vote.

But the provision neglects to require that such allegations be submitted by parties in interest--not simply by some meddler who seeks to create trouble between other persons. This is another provision of this bill similar to Section 131 (c)/ which would permit the Attorney General to make the United States a party to a case / without the consent of the party actually involved.

Another objection to 104 (a) is that under this provision a person could make an allegation to the Commission, against a person who was not even a citizen of the same State. Even so, under the mandatory language of Section 104 (a), the Commission would be required to make an investigation of the charges.

Since the Commission is limited by Section 102 (k) to subpoenaing witnesses to hearings only within the State of residence of the witness, there would be no opportunity in such a situation for the accused to confront his accuser. Charges against a person should not be accepted by the Commission unless the accuser is a citizen of the same State as the person he is charging with a violation of the law.

Also, Mr. President, once the Commission has received the sworn allegation, there is no requirement that other testimony received relating to the allegation be taken under oath. Failure to make all persons giving testimony subject to perjury prosecutions in the event they testify to falsehoods would surely destroy the value of any such testimony received.

The Commission could and might adopt a rule to require sworn testimony; but I should not like to see the Senate leave that point to the discretion of the Commission because, in my judgment, the Congress should require that practice to be followed.

Mr. President, as I stated earlier, it is my view that an inquiry into the field of civil rights, or so-called civil rights, is entirely unnecessary at this time. The laws of the States and the federal laws are being enforced effectively.

Should there come a time when information might be needed on this subject, the Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with deliberation and care. The appropriate committees of the Congress itself should hold hearings limited to the jurisdiction of the Congress, and the Congress should make its own determination as to the need for legislation.

There is no present indication that any such study will be needed.

Part II of the bill still provides for the appointment of one additional Assistant Attorney General in the Justice Department. As I have stated in previous addresses, there is absolutely no need for an additional Attorney General to be appointed at a cost to the taxpayers of \$20,000 per year.

Of course, that would merely be a small part of the total cost because a large staff of lawyers would also be employed.

The other provisions of the bill do not necessitate the establishment of a civil rights division in the Justice Department, because there is no indication there would be any substantial increase in such cases with which the Department should be concerned.

As a matter of fact, even those who have advocated passage of H. R. 6127 have admitted time and again here in the Senate that there has been a steady decrease in the number of civil rights cases throughout the country.

Since there has been a decrease in civil rights cases, and since there is no indication that any increase should be expected, I can see absolutely no reason for the expansion of the present civil rights section of the Justice Department into a civil rights division with an additional Assistant Attorney General in charge.

Mr. President, in view of the fact that sufficient justification has not been presented for the appointment of an additional Assistant Attorney General, I hope the Senate will not approve such additional expenditures as would be required for this purpose. In my opinion, the Attorney General has failed entirely to show a need for an additional assistant.

Part III of the bill as amended has been thoroughly discussed and I shall not dwell on that at this time.

Part IV, which is the section dealing with what the advocates of the bill have said was the entire purpose of the bill, still has provisions which are objectionable to me. Section 131 (c) still contains language which, to me, borders on an effort at thought control instead of providing an unneeded additional guarantee of the right to vote. Also, it gives the Attorney General undue authority. The section reads as follows:

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person."

As long ago as February 26, when I appeared before the special Judiciary Subcommittee of the House of Representatives to testify against pending civil rights bills, I expressed my opposition to the language contained in the section I have just quoted. I do not believe it possible for the Attorney General, for any of his representatives, or for anybody else to determine what is in another person's mind and whether he is "about to engage" in some violation of the law.

If the Attorney General should attempt to ascertain what is going on in the minds of other persons, he will need soothsayers and prophets instead of an additional Attorney General.

I object to this language because I do not believe it possible for any witness to testify truthfully that he knows another person was "about to" violate the law, unless some overt action had been taken by the accused person.

Mr. President, an attempt to apply this provision against American citizens would be completely out of keeping with the guarantees of personal freedom contained in the Constitution and in the Bill of Rights.

I object also to the authority granted the Attorney General in section (c) to "institute for the United States, or in the name of the United States," a civil action or other court proceeding on behalf of a person without the consent of that person. Individuals have adequate legal remedies which they themselves may institute on

their own behalf. It is not necessary to give the Attorney General this extreme power of absolute discretion to be exercised as he desires on behalf of some individual who may not wish to take court action or to have anybody else take such action on his behalf.

If one of the duties of the proposed additional Assistant Attorney General would be to seek out persons and insist upon entering the courts on their behalf, this provision, combined with Part II, provides another objection to the appointment of an Assistant Attorney General.

The American system has never condoned the idea that a third party should stir up trouble between two other persons. Instead, the American system abhors trouble makers, especially when trouble making takes the form of barratry. This form of trouble making has been looked down upon much in the same way other lawyers look down upon their colleagues who chase ambulances.

The United States government should not be placed in this position of disrepute, and certainly it should not be called upon to bear the expenses of such court proceedings.

Another particularly obnoxious provision is found in Section 131 (d) which provides that:

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

No legitimate reason has been presented as to why administrative remedies and remedies provided in the courts of the States, should not be exhausted prior to federal district courts taking jurisdiction in election law violations.

This could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority and to vest it in the federal courts. Some of the advocates of H. R. 6127 have spoken out strongly on behalf of the federal courts during the debate on the jury trial amendment. I wish they were equally as vehement in their defense of our State courts.

There is no reason to permit an individual to bypass the administrative agencies of his own State and the courts of his own State in favor of a federal court when the matter involved is

principally a State matter. If a person should be dissatisfied with the results obtained in the State agency and courts, he could then appeal from the decision. But until he has exhausted established remedies, he should not be permitted to bypass them.

The laws of all the forty-eight states contain provisions protecting the right to vote. No additional protection is needed beyond existing State and federal laws.

In my own state of South Carolina, the Constitution of 1895 required the General Assembly to provide by law for the punishment of crimes against the election laws. That has been done. The State Constitution further required a provision to permit a person to appeal to the State Supreme Court if he should be denied registration. The election law spells out the right of appeal to the State Supreme Court, and requires that the court hold a special session if one is not scheduled between the time of an appeal and the next election.

South Carolina's Constitution also provides that no power, civil or military, shall at any time prevent the free exercise of the right of suffrage in the State. In pursuance of this constitutional provision, the South Carolina General Assembly has enacted laws for the punishment of anyone who threatens, mistreats, or abuses any voter in an effort to control or intimidate him in the free exercise of his right of suffrage. These laws apply to all elections. Anyone who violates these laws is subject to a fine and/or imprisonment.

Mr. President, in view of the existing laws of the States and the existing federal laws, I now contend, as I have contended since the so-called civil rights bills were introduced, that any qualified voter in the United States is fully protected in his right of suffrage.

This bill, H. R. 6127, is unnecessary. It is an encroachment upon the rights of the States, and it infringes upon the rights of individuals when the Attorney General is empowered to take action on the behalf of any person without his consent.

I believe this bill should be rejected, because of the various unnecessary and unconstitutional provisions which I have discussed.

Part V of the bill, which was added to insure and provide for trial by jury in proceedings to punish criminal contempts, is an amendment which I approved and voted for, but I do not consider it as strong as desirable. In my opinion, the bill which the senior Senators from Mississippi and Virginia and I introduced in the Senate last March should be approved, to provide best for the right of trial by jury for every American citizen.

However, the addition of Part V to the bill makes it much less objectionable than the bill would have been without the assurance of trial by jury in criminal contempt proceedings contained in Part V.

Mr. President, I want to reiterate my previous assertions that this bill is unnecessary, and in some respects unconstitutional.

H. R. 6127 in its original form carried the label of being a right to vote bill; but when we unwrapped the package here in the Senate and examined it carefully, as we have, we found the label was entirely misleading.

The so-called civil rights bill should have been entitled a bill to empower the Attorney General to deprive certain citizens of their right to trial by jury. Also, it should have been labeled as an implement intended to be used to force integration of the races in the public schools.

Happily, we examined the contents of the package, stripped off the old label, and advertised the deception so that every citizen could recognize the dangers wrapped in the package.

The amendments which have been enacted have reduced the power which was intended to be placed in the hands of the Attorney General. They have removed the authority for the use of military forces in cases of alleged civil rights violations. They have made the proposed Commission answerable to Congress as well as to the President, and have provided for the members to be subject to confirmation by the Senate. They have better defined and narrowed the powers of federal judges in contempt proceedings. All of these amendments have vastly ameliorated the original obnoxiousness of H. R. 6127. However, nothing could entirely remove the objectionable features of this packaged bill of goods, submitted to the American people under a deceptive label.

I shall vote against passage of H. R. 6127, because I believe that in so doing I shall be casting a vote for the preservation of our liberties, and for the preservation of constitutional government in this country.

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